



**In re Estate of late Joseph Kuria alias Kariuki Kuria Muriithiria (Deceased)
(Succession Cause 245 of 2014) [2024] KEHC 963 (KLR) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 963 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 245 OF 2014
HI ONG'UDI, J
JANUARY 30, 2024**

**IN THE MATTER OF THE ESTATE OF LATE JOSEPH KURIA
ALIAS KARIUKI KURIA MURIITHIRIA (DECEASED)**

BETWEEN

FRANCIS MUTHOGA MUHIKA APPLICANT

AND

MWIHOKO KAG CHURCH NEW APPLICANT

AND

SAMWEL KARONJO MURIUKI RESPONDENT

RULING

1. The applicants filed summons dated 6th September 2022 pursuant to the provisions of Section 76 of the [Law of Succession Act](#) and Rule 44 and 73 of [Probate and Administration Rules](#) seeking the following orders: -
 - a. a-c spent
 - b. That the grant of lettes of administration issued to Samwel Karonjo Muriukibe revoked.
 - c. That the honourable court do issue directions as to the administration of the estate.
2. The application is premised on the grounds on the face of it and the supporting affidavit of the 1st applicant. He deposed that both him and the 2nd applicant were buyers in the estate of the deceased herein. That the respondent secretly took out letters of administration without their consent and the grant was confirmed on 20th July 2015. He further deposed that the respondent had concealed material



facts from the court especially those concerning the beneficiaries of the deceased's estate. That it was the respondent's intention to use the letters of administration and grant to interfere with the estate of the deceased herein and they stood to be disinherited by him.

3. Further, that the respondent's act of concealing material facts to court regarding the beneficiaries of the deceased's estate showed that his intentions were mala fides prohibita in se and contrary to the interests of all the beneficiaries. He added that the respondent who was the administrator of the estate of the deceased had refused to disclose the extent to which he had already administered the estate and it was in the interest of justice, and for the benefit of the beneficiaries of the estate of the deceased that they make the present application.
4. The respondent in response filed a replying affidavit dated 2nd June 2023. He averred that the applicants had not satisfied the requirements of section 76 of the *Law of Succession Act* which provided for revocation of grant in the event that the same was procured through defective proceedings or obtained through untrue allegation of material facts. That the deceased herein who passed on 3rd August 1998 was his late father and he had therefore obtained the grant lawfully. Further, that he petitioned for letters of administration and applied for confirmation of the grant with the consent of his siblings and the grant was confirmed on 20th July 2015.
5. He further averred that upon confirmation of the grant the property known as Nyandarua/Olaragwa/1994 was duly transferred to his name and none of his siblings had raised an issue. That the applicants had not attached any documents as evidence of their claim of being purchasers of properties of the estate. Additionally, that the law was settled as to any purchaser's interest as claimed by the applicants and the same could only be determined by the Environmental and Land Court in terms of the provisions of Article 162 of the *Constitution*.
6. It was the respondent's averment that the applicants' claim against the estate of the deceased could only be valid if they had obtained a decree through a civil suit. That the applicants' claim in this case touched on the use, occupation and title to land, therefore the probate court was not clothed with the jurisdiction to determine those issues as per the provisions of Article 162(2)(b) of the Constitution. He added that to the extent that his siblings had not raised any objection and duly consented to the entire process of issuance of the grant, there was no basis to entertain the present application. He urged the court to dismiss the applicants' application with costs.
7. The applicants responded to the respondent's affidavit through a further affidavit dated 4th August 2023 where they reiterated all the averments made in their application and the supporting affidavit therein.
8. The application was canvassed by written submissions.

Applicant's submissions

9. The applicants' submissions are dated 21st July, 2023 having been filed by Wainanina Gakima advocates. Counsel has raised one issue for determination that is; whether the grant of letters of administration issued to the respondent herein should be revoked. The applicants placed reliance on section 76 of the *Law of Succession Act*, the judicial decisions *in Estate of Prisca Ong'ayo Nande (deceased)* [2020] eKLR and *Re Estate of Moses Wachira Kimotho (deceased)* Succession Cause 122 of 2002 [2009] eKLR. They submitted that the respondent who was the administrator of the estate of the deceased's estate had misled the court in the application for the grant of Letters of Administration as well as concealed very crucial information of them being beneficiaries of the estate.
10. They urged the court to find in their favour and grant the orders sought.



Respondent's Submissions

11. The respondents' submissions filed by Murimi, Ndumia Mbago & Muchela advocates are dated 10th October, 2023. Counsel identified two issues for determination. The first issue is whether this honourable court should revoke the grant issued to the respondent. He submitted that none of grounds in section 76 of the Law of Succession and as discussed in the case of Re Estate of Prisca Ong'ayo Nande (deceased) [2020] eKLR had been satisfied by the applicants. That he had complied with the procedures set out in the law of succession and probate and administration rules in petitioning for the grant with the consent of his siblings.
12. He further submitted that the applicants herein claimed to be purchasers of the property of the deceased property but had not annexed any document in their application in form of a sale agreement, transfer, land control board consent to substantiate their claim. That this was contrary to the provisions of section 107 of the Evidence Act which states that whoever alleges must prove. He prayed that the applicants' application be dismissed. He placed reliance on the case of Re Estate of Charles Mburu Shadrack (deceased) (Succession Cause 1 of 2018) [2022] KEHC 3374 (KLR) (28 April 2022) (Ruling).
13. On the second issue, as to whether this court has jurisdiction to determine ownership of land claimed by the applicants, counsel submitted that jurisdiction is at the core of the exercise of any power by a court. That therefore where there was no jurisdiction the court could not exercise such power without violating the principles of the rule of law and legality. He placed reliance on the locus classicus case of Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd [1989] eKLR.
14. Counsel went on to submit that the applicants herein lay a claim to properties in the deceased's estate, not as inheritors but as purchasers of the said properties sold to them by the deceased. That a determination whether there was a valid sale of land as claimed by the applicants was well outside the jurisdiction of this court. He placed reliance on Articles 162 (2) and 165 of the Constitution and the case of Leonard Waweru Gichuhi & 2 others v Maray Wanjiku Mangara & 3 Others [2017] eKLR, where the court held that the claim by the respondent therein was one touching on use and occupation of land and title to land and therefore a probate court was not clothed with jurisdiction to determine the issues arising therein.
15. Further, counsel placed reliance on the case of Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR, where the court held that when disputes arise after the confirmation of grant, the same ought to be determined outside the probate court. In addition, he cited the case of Re Estate of Dorcas Wanjiku and submitted that the law was settled that when a claim against the estate was comprised of a valid decree, the creditor ought to seek to enforce such a decree against the administrator of the estate in a civil action.
16. In conclusion counsel submitted that the application by the applicants asking a probate court to determine matters that should be determined by an Environmental and Land Court was an abuse of the court process. He urged the court to dismiss the said application.

Analysis and Determination

17. Having carefully considered the summons for revocation, all affidavits and the submissions by parties, I find one issue falling for determination by this court namely; Whether the applicants' application has met the threshold for revocation of a grant.



18. For avoidance of doubt, Section 76, (a), (b) and (c) the [Law of Succession Act](#) provides for revocation of grants and states as follows:

“76. Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- a. that the proceedings to obtain the grant were defective in substance;
- b. that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;”

19. On the other hand, Rule 44 of the [Probate and Administration Rules](#) provides as follows:

“44. Revocation or annulment of grant

- (1) Where any person interested in the estate of the deceased seeks pursuant to the provisions of section 76 of the [Act](#) to have a grant revoked or annulled he shall, save where the court otherwise directs, apply to the High Court for such relief by summons in Form 107 and, where the grant was issued through the High Court, such application shall be made through the registry to which and in the cause in which the grant was issued or, where the grant was issued by a resident magistrate, through the High Court registry situated nearest to that resident magistrate’s registry.

- d. There shall be filed with the summons an affidavit of the applicant in Form (2) 14 for revocation or annulment identifying the cause and the grant and containing the following particulars so far as they are known to him—

- e. whether the applicant seeks to have the grant revoked or annulled (a) and the grounds and facts upon which the application is based; and

- f. the extent to which the estate of the deceased has been (b) or is believed to have been administered or to remain un-administered, together with any other material information.

- g. The summons and affidavit shall without delay be placed by the registrar (3) before the High Court on notice in Form 70 to the applicant for the giving of directions as to what persons (if any) shall be served by the applicant with a copy of the summons and affidavit and as to the manner of effecting service; and the applicant, upon the giving of directions, shall serve each of the persons so directed to be served with a notice in Form 68, and every person so served may file an affidavit stating whether he supports or opposes the application and his grounds therefor.



- h. When the persons (if any) so directed to be served (or such of them as
(4) the applicant has been able to serve) have been served with a copy of the proceedings, the matter shall be placed before the High Court on notice by the court to the applicant and to every person so served, and the court may either proceed to determine the application or make such other order as it sees fit.
- i. Where the High Court requires that notice shall be given to any person of its
(5) intention of its own motion to revoke or annul a grant on any of the grounds set out in section 76 of the Act the notice shall be in Form 69 and shall be served on such persons as the court may direct.”
20. By virtue of Section 76 of the [Law of Succession Act](#), a grant of representation is liable to revocation on the grounds of concealment of material information from the court and for misrepresentation. The revocation may be on the courts own motion or on an application by a party. *In the Matter of the Estate of Esther Wanjiru Mucheru (deceased)*, Nairobi High Court Succession Cause No.1996 of 1999, the court noted that Section 76 of the [Law of Succession Act](#) was discretionary in that the court had discretion on whether to revoke or annul a grant. Further, in [Kennedy Opiche Olela v William Ogida Ochuodho & another](#) [2014] eKLR, the court was of the view that it is the duty of the applicant to prove that any of the grounds set out under Section 76 had been committed before the court can revoke a grant already issued.
21. In the present application, the applicants peg their application for revocation of grant on Section 76 of the [Law of Succession Act](#), Rules 44 and 73 of [Probate and Administration Rules](#), on grounds that the respondent herein secretly took out letters of administration without their consent. Further, that in obtaining the said Letters of Administration and grant there was concealment of material facts from the court especially as to the beneficiaries of the deceased’s estate. The information that should be carried in an application for grant is set out in Section 51(2) of the [Law of Succession Act](#). The relevant provision is Section 51 (2) (g) of the said Act. It states as follows: -
- “51(2) An application shall include information as to –
- (g) in cases of total or partial intestacy, the names and addresses of all previous spouses, children, parents, brothers and sisters of the deceased and of the children of any child of his or hers then deceased;...”
22. Having perused the court records, I note that the application for Letters of Administration in this cause for the estate of the deceased took the form of a petition filed on 4th April 2014. The affidavit in support of the petition discloses names of the deceased’s children as the survivors. The said petition was not contested and the grant was subsequently confirmed on 20th July 2015 in court in the presence all the children. In my opinion, the particulars set out in the petition conform with the prerequisites of section 51(2)(g) and therefore it cannot be said that the respondent concealed information from the court to warrant revocation under section 76 of the [Law of Succession Act](#).
23. The applicants in their application claim to be purchasers of the land belonging to the deceased. However, the only document they have attached to demonstrate proof of ownership is a letter dated 7th April, 2014 from the chief of Murungau Location by the name of Joseph Kimani Mwangi. On further perusal of the file I have noted that while filing the petition for letters of administration a letter from the area chief (which is a requirement) was filed. The said letter is dated 26th February, 2014 and was filed on 4th April 2014. The letter is by the same Joseph Kimani Mwangi Chief of Murungaru Location.



24. In the letter dated 26th February, 2014 he did not make mention of the names of Purchasers. The alleged purchasers' names are however mentioned in the letter dated 7th April, 2014. There is no evidence that this letter was ever brought to the attention of the Court (though addressed to the Resident Magistrate without a known court) It was filed by the Applicants on 21st September, 2022 while the grant was confirmed on 20th July, 2015.
25. There is equally no evidence to show that the Applicants ever personally or through the administration informed the deceaseds' family that they had an interest in his estate by virtue of being purchasers.
26. Their claim in respect of the succession matter before this court could only be recognized if they had certificates of title issued under section 26(1) of the *Land Registration Act* or a decree from the Environment & Land Court, confirming ownership. In the instant application the applicants are seeking to have this court determine an issue to do with their ownership of portions in the deceased's land. That is a matter falling under the jurisdiction of the Environment and Land Court, and the earlier they act the better for them.
27. The upshot is that the Applicant's application has not met the threshold for revocation of grant. The application dated 6th September, 2022 is thus dismissed with costs.
28. Orders accordingly.

DELIVERED, VIRTUALLY, DATED AND SIGNED THIS 30TH DAY OF JANUARY, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

